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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

<p>PHARMASTEM THERAPEUTICS, INC., a Delaware corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>CORD BLOOD REGISTRY, INC., dba CBR, a California corporation, and SUTTER HEALTH, INC., a California corporation.</p> <p>Defendant.</p>	<p><b>CASE NO. 04-3072 JSW</b></p> <p><b>PHARMASTEM THERAPEUTICS, INC.'S OPPOSITION TO CBR'S SUPPLEMENTAL NOTICE OF PENDENCY OF OTHER ACTION OF PROCEEDING PURSUANT TO L.R. 3- 13(c)</b></p>
<p>CBR SYSTEMS, INC., dba CBR a California corporation</p> <p>Counterclaimant</p> <p>v.</p> <p>PHARMASTEM THERAPEUTICS, INC., a Delaware corporation; STEMBANC, INC., a Ohio corporation; NICHOLAS DIDIER; and ARCHIBALD A. GRABINSKI</p> <p>Counterdefendants.</p>	

1 Pursuant to Civil L.R. 3-13(c), Plaintiff PharmaStem Therapeutics, Inc. ("PharmaStem")  
2 hereby oppose CBR Systems, Inc.'s ("CBR") Supplemental Notice of Pendency of Other Action or  
3 Proceeding filed on October 28, 2004 ("CBR's Notice"), because the case entitled *ViaCell, Inc.,*  
4 *Cryo-Cell International, Inc and CorCell, Inc. v. PharmaStem Therapeutics, Inc.*, filed on October  
5 5, 2004 in the United States District Court of Delaware, Civil Action No. 04-1335 (the "Second  
6 Delaware Action") does not satisfy the "relatedness requirements" under Local Rule 3-13(a).

7 Local Rule 3-13(a) requires that an action be disclosed to the Court whenever it "involves  
8 all or substantially all of the same parties **and** all or a material part of the same subject matter" as  
9 any action in this district. *See* L.R. 3-13(a)(emphasis added). The Second Delaware Action fails  
10 to meet either, let alone both, of these requirements under the rule.

11 Only **one party**, namely PharmaStem, is named in both this action and the Second  
12 Delaware Action. Nicholas Didier, CBR, Sutter Health, Inc., Stembanc, Inc. and Archibald  
13 Grabinski are not parties to the Second Delaware Action, and no other parties to the Second  
14 Delaware Action are named in this action. Clearly, having only **one of nine** total parties in  
15 common between the two actions does not constitute "all or substantially all of the same parties"  
16 as required under the rule.

17 Furthermore, the plaintiffs in the Second Delaware Action (**none** of which are parties to this  
18 action) have asserted various antitrust, unfair competition, and tort causes of action against  
19 PharmaStem that are not based on "all or a material part of the same subject matter" as this action.  
20 L.R. 3-13(a). In this action, PharmaStem alleges that CBR infringes two of PharmaStem's patents,  
21 U.S. Patents Nos. 6,461,645 B1 and 6,569,427 B1 (the "'427 Patent"), and that Sutter Health also  
22 infringes the '427 Patent. Thus, the subject matter of this action involves CBR's and Sutter Health's  
23 activities related to cord blood banking.

24 In sharp contrast, the Second Delaware Action is not a patent infringement action and does not  
25 involve any patent infringement claims, or defenses or counterclaims related to patent infringement.  
26 Specifically, the following claims have been alleged against PharmaStem in the Second Delaware  
27 Action: (1) violation of 15 U.S.C. §§1-2 for unreasonable restraint of trade and attempted  
28 monopolization; (2) violation of 15 U.S.C. §1125(a) for federal unfair competition; (3) violation of

